

JAN 18 2008

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

URIEL SERNA-SERNA,

Defendant - Appellant.

No. 07-10136

D.C. No. CR-06-00119-RLH

MEMORANDUM \*

Appeal from the United States District Court  
for the District of Nevada  
Roger L. Hunt, District Judge, Presiding

Submitted January 14, 2008 \*\*

Before: HALL, O'SCANNLAIN, and PAEZ, Circuit Judges.

Uriel Serna-Serna appeals from the 50-month sentence imposed following his guilty plea conviction for unlawful reentry in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Serna-Serna contends that the district court erred in enhancing his sentence based on a prior conviction not alleged in the indictment, admitted by him at his change of plea hearing, or proven to a jury beyond a reasonable doubt. We reject this contention as foreclosed. *See United States v. Covian-Sandoval*, 462 F.3d 1090, 1096-97 (9th Cir. 2006).

Serna-Serna further contends that even if *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), has not been overruled, this Court should construe 8 U.S.C. § 1326 pursuant to the doctrine of avoidance of constitutional doubt such that a two-year statutory maximum sentence applies to his offense. This contention is also foreclosed. *See United States v. Salazar-Lopez*, 506 F.3d 748, 751 n.3 (9th Cir. 2007).

**AFFIRMED.**